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15 LORI RAINES, individually and on behalf of a class of others similarly situated

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 LORI RAINES, an Individual; and on  
19 Behalf of all Others Similarly Situated,

20 Plaintiffs,

21 vs.

22 PLANTRONICS INC., a Delaware  
23 corporation, and DOES 1-10, et al.,  
24 Defendants.

25 CASE NO.

26 **CLASS ACTION**

27 **COMPLAINT FOR:**

28 1) VIOLATION OF CONSUMERS  
LEGAL REMEDIES ACT,  
(CAL. CIV. CODE § 1750 et seq.);

2) VIOLATION OF UNFAIR  
COMPETITION LAW,  
(CAL. B & P CODE § 17200 et seq.);

3) UNTRUE AND MISLEADING  
ADVERTISING  
(CAL. B & P CODE § 17500, et seq.)

4) UNJUST ENRICHMENT

5) BREACH OF EXPRESS  
WARRANTY

6) BREACH OF IMPLIED  
WARRANTY

**JURY TRIAL DEMANDED**

Complaint

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

1 Plaintiff LORI RAINES ("Plaintiff"), individually and on behalf of others  
2 similarly situated, brings this action against Defendants PLANTRONICS INC., a  
3 Delaware corporation, and DOES 1-10, et al. (jointly "Defendants"), demanding a  
4 trial by jury, as follows:

5  
6 **JURISDICTION AND VENUE**  
7

8 1. This Court has original jurisdiction over this class action pursuant to 28  
9 U.S.C. § 1332(d)(Class Action Fairness Act), in that the matter in controversy  
10 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, there are at  
11 least 100 members of the proposed class, and at least one member of the class is a  
12 citizen of a different state than Defendants.

13  
14 2. This Court has general and specific personal jurisdiction over each of  
15 the named Defendants. Each of the Defendants was engaged in unfair business  
16 practices directed at and/or causing injury to persons residing, located or doing  
17 business in the United States.

18  
19 3. Plaintiffs are informed and believe that Defendants each are authorized  
20 to do business in California, have sufficient minimum contacts with California,  
21 and/or otherwise intentionally avail themselves of the markets in California through  
22 the promotion, marketing and sale in California of Bluetooth headsets, to render the  
23 exercise of jurisdiction by this Court permissible under traditional notions of fair play  
24 and substantial justice.

25  
26 4. Venue in this Court is proper under 28 U.S.C. § 1391(b) and (c),  
27 because Defendants have transacted business, maintained offices, or are otherwise  
28 found within this district, and many of Defendants' unlawful acts giving rise to

1 Plaintiffs' claims occurred, and a substantial portion of the affected interstate trade  
2 and commerce described below has been carried out, in this district in the Los  
3 Angeles area.

4  
5 5. Venue also is proper in this Court pursuant to California Code of Civil  
6 Procedure § 395(a), in that this action arises from an offer or provision of services  
7 intended primarily for personal use. Plaintiff resided in the County of Los Angeles at  
8 the time that the purchase at issue was made, and continues to live in the County of  
9 Los Angeles at the present time. Plaintiffs purchased the product at issue in the  
10 County of Los Angeles.

11  
12 6. The business activities of Defendants at issue in this Complaint were  
13 within the flow of and substantially affected interstate trade and commerce. There  
14 has been a continuous and uninterrupted flow of activities in interstate commerce  
15 throughout the class period.

16  
17 **THE PARTIES**

18  
19 7. Individual and representative plaintiff Lori Raines is a resident of the  
20 County of Los Angeles, State of California.

21  
22 8. Plaintiff is informed and believes and on that basis alleges that  
23 Defendant Plantronics Inc. ("Plantronics") is a Delaware corporation, with its  
24 principal place of business in California, registered to do business, and doing  
25 business, in the state of California.

26  
27 9. Plantronics is authorized to do business in California, has sufficient  
28 minimum contacts with California, and/or otherwise intentionally avails itself of the

1 markets in California through the promotion, marketing and sale of its products in  
2 California, to render the exercise of jurisdiction by this Court permissible under  
3 traditional notions of fair play and substantial justice.

4  
5 10. The true names and capacities, whether individual, corporate, associate  
6 or otherwise of defendants DOES 1 through 10, inclusive, and each of their roles in  
7 this case, are unknown to Plaintiffs, who therefore sue said defendants by such  
8 fictitious names pursuant to Code of Civil Procedure § 474, F.R.Civ.P. 19 and L.R.  
9 19-1. Plaintiff further alleges that each of said fictitiously named defendants is in  
10 some manner responsible for the acts and occurrences set forth herein. Plaintiff will  
11 amend this Complaint to show their true names and capacities when the same is  
12 ascertained, as well as the manner in which each fictitiously named defendant is  
13 responsible.

14  
15 11. Plaintiffs are informed and believe, and thereon allege that at all times  
16 mentioned, that Defendants are each the partners, joint venturers, alter egos, and/or  
17 co-conspirators of each other. At all times mentioned, there existed such a unity of  
18 interest in ownership and interests between each of the Defendants that any  
19 separateness ceased to exist between them. The exercise of complete dominance and  
20 control over the other entities and their properties, rights and interests, rendered such  
21 entities as mere shells and instrumentalities of each other Defendant.

22  
23 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

24  
25 12. This action arises from Defendants' marketing, manufacture, and  
26 distribution of devices known as "Bluetooth Headsets" which permit wearers to  
27 utilize a mobile phone without holding the phone next to the face and without the  
28 necessity of wires connecting the phone to the headset.

1        13. Plantronics has manufactured and distributed many different models of  
2 Bluetooth Headsets, including the Discovery 655 , Discovery 645 , Discovery 640 ,  
3 Discovery 640E , Voyager 510 , Explorer 350 , Explorer 340 , and Explorer 330  
4 (collectively the "Headsets"). On the packaging of these Headsets, Plantronics has  
5 made false representations, omissions and concealments to purchasing consumers in  
6 order to induce the consumers to purchase the product. Each Headset is sold with  
7 affirmative representations that it can be used for extensive time periods, yet the  
8 packaging lacks any warnings regarding the noise induced hearing loss, a condition  
9 which has no cure or treatment, which can be expected to result from use of the  
10 Headsets in most environments over that period of time.

11  
12        14. Use of Bluetooth headsets is becoming increasingly popular among the  
13 consuming public because of the ease and convenience associated with the  
14 technology. According to the Insight Research Corporation ("IRC"), "[n]early 65  
15 percent of Americans, or 195 million people, are expected to be mobile phone  
16 subscribers by the close of 2005." IRC has also reported that "[a]s users become  
17 more used to the convenience of cellular, long distance and local usage is shifting  
18 from wireline to cellular. The average wireline residential toll minutes of use  
19 (MOUs) have been dropping at a compounded rate of 15 percent since 2000, while  
20 wireless interstate MOUs per user grew at a compounded rate of nearly 40 percent  
21 during the same period. According to one FCC study, on the wireless side, the  
22 percentage of interstate residential minutes has increased from 16 percent to 26  
23 percent of all wireless minutes." As more and more people switch from using  
24 landlines to using mobile phones in order to accommodate their telecommunication  
25 needs, more and more consumers are spending hours per day on the mobile phone.  
26 Such increased usage is particularly dramatic with respect to individuals using a  
27 mobile phone for business purposes.

1           15. As explained by the National Institute on Deafness and Other  
2           Communication Disorders (NIDCD) [www.nidcd.nih.gov/health/hearing/noise.asp](http://www.nidcd.nih.gov/health/hearing/noise.asp),  
3           "[h]earing is a series of events in which the ear converts sound waves into electrical  
4           signals that are sent to the brain and interpreted as sound. The ear has three main  
5           parts: the outer, middle, and inner ear. Sound waves enter through the outer ear and  
6           reach the middle ear where they cause the eardrum to vibrate." Noise induced  
7           hearing loss "can be caused by . . . repeated exposure to sounds at various loudness  
8           levels over an extended period of time."  
9

10           16. "The vibrations are transmitted through three tiny bones in the middle  
11           ear, called the ossicles. These three bones are named the malleus, incus, and stapes  
12           (and are also known as the hammer, anvil, and stirrup). The eardrum and ossicles  
13           amplify the vibrations and carry them to the inner ear. The stirrup transmits the  
14           amplified vibrations through the oval window and into the fluid that fills the inner  
15           ear. The vibrations move through fluid in the snail-shaped hearing part of the inner  
16           ear (cochlea) that contains the hair cells. The fluid in the cochlea moves the top  
17           portion of the hair cells, called the hair bundle, which initiates the changes that lead  
18           to the production of nerve impulses. These nerve impulses are carried to the brain,  
19           where they are interpreted as sound. Different sounds move the hair bundles in  
20           different ways, thus allowing the brain to distinguish one sound from another, such as  
21           vowels from consonants."  
22

23           17. Plaintiff is informed and believes that noise induced hearing loss is the  
24           slow loss of hearing caused by too much noise. Hearing loss happens when too much  
25           noise hurts the hair cells in the inner ear. Noise induced hearing loss is one of the  
26           most common causes of nerve deafness. Noise induced hearing loss lasts forever.  
27           There is no treatment, no medicine, no surgery, and no device which can correct  
28           hearing once damaged by noise.

1       18. Plaintiff is informed and believes that noise induced hearing loss can  
2 happen gradually over time and does not cause pain. As such, one is not aware that  
3 noise induced hearing loss is occurring until it is too late. Because noise induced  
4 hearing loss is an insidiously developing hearing impairment, damage occurs prior to  
5 the point at which it is perceived.  
6

7       19. Noise induced hearing loss can also result because an individual has  
8 become accustomed to a particular sound level. As the individual gradually suffers  
9 hearing loss, in an effort to compensate for the decrease in ability to hear, the  
10 individual unwittingly increases the volume of a device in order to hear the sound  
11 produced and thereby compounds the injury.  
12

13       20. Another organization, Dangerous Decibels, a public health partnership  
14 for the prevention of noise induced hearing loss, advises the public that "[a]  
15 dangerous sound is anything that is 85 dB (sound pressure level - SPL) or higher."  
16 The organization further explains that "[o]f the roughly 40 million Americans  
17 suffering from hearing loss, 10 million can be attributed to noise-induced hearing loss  
18 (NIHL). NIHL can be caused by a one-time exposure to loud sound as well as by  
19 repeated exposure to sounds at various loudness levels over an extended period of  
20 time."  
21

22       21. Exposure to a time weighted average decibel level by itself can cause  
23 harm. One knowledgeable organization, the National Institute for Occupational  
24 Safety and Health (NIOSH), has offered the view that exposure to sound averaging at  
25 85 decibels for more than 8 hours a day by itself presents a risk of hearing loss.  
26 According to NIOSH, each three decibel volume increase reduces the safe exposure  
27 time by half, which reflects the logarithmic nature of the decibel scale. For example,  
28 if a Headset set on the higher volume level produces decibel levels of 91 decibels,



1 noise induced hearing loss statistically develops if the Headset is used for more than  
2 two hours a day. At 94 decibels, noise induced hearing loss statistically develops if  
3 the Headset is used for more than one hour a day. At 102 decibels, irreversible  
4 damage statistically develops if the Headset is used for more than 7 ½ minutes per  
5 day.

6  
7 22. Plantronics' Headsets have volume controls which produce sounds  
8 exceeding 85 decibels, with sound often peaking in excess of 100 decibels.  
9 According to the standards promulgated by such organizations as NIOSH and  
10 Dangerous Decibels, a consumer statistically develops NIHL if exposed to such  
11 sounds for less than 15 minutes a day. Further, the consumer cannot determine,  
12 without resorting to scientific testing, the decibel level of the sound being emitted  
13 from the Headset.

14  
15 23. The packaging on the Headsets advises that the Headsets can be used  
16 for "extended talk time." The various models indicate talk time of 3 hours, 6 hours, 8  
17 hours, 9 hours, 10 hours, and even 15 hours. However, the representations as to  
18 permissible talk times are false, as a consumer cannot safely use the Headsets for the  
19 talk times represented. Plaintiffs and the Class members relied upon these  
20 representations made by Defendants in determining whether to purchase the Headsets  
21 at the high price charged for the devices.

22  
23 24. Millions of consumers have had their hearing put at risk by Plantronics'  
24 conduct. Plaintiff and the class members detrimentally relied upon the affirmative  
25 misrepresentations, omissions and concealments made by Defendants regarding the  
26 permissible use of the product. Plaintiff and the class members further relied upon  
27 Defendants' skill and judgment to furnish suitable goods which would not cause harm  
28 to the consumer, and to warn the consumer of any information known by Defendants,

1 or which should reasonably have been known by Defendants, relating to the safe  
2 operation of the product.

3  
4 25. Defendants sold the Headsets with a booklet setting forth "important  
5 safety and operational information" relating to use of the Headsets. However,  
6 Defendants omitted and concealed from consumers any safety information pertaining  
7 to the Headsets' propensity for causing noise induced hearing loss. Defendants also  
8 omitted and concealed from the consuming public information advising that the  
9 Headsets produced noise at decibel levels exceeding 85 db, and even exceeding 100  
10 db.

11  
12 26. The same misrepresentations, omissions and concealments were made  
13 in the product packaging to each consumer who purchased the product. Plaintiff and  
14 the class members relied upon the misrepresentations, omissions and concealments in  
15 purchasing the Headsets.

16  
17 27. Because the Headset transmits sound to only one ear, extraneous sound  
18 from the environment is simultaneously being heard by the Headset user from the  
19 other ear. Such ambient sound makes it more difficult for the Headset user to isolate  
20 and hear the sound being transmitted over the Headset. The Headset user is thus  
21 required to maximize the volume of the Headset in order to overcome the extraneous  
22 noise being heard in the other ear.

23  
24 28. Plaintiff purchased and used a Headset manufactured and distributed by  
25 Defendants. Plaintiff was not aware that the Headset was emitting sounds in excess  
26 of safe decibel levels which thereby required the time the product could safely be  
27 used to be greatly minimized. Plaintiff would not have purchased the Headset,  
28 including at the price charged, if Defendants had disclosed the truth.

1           29. The design, manufacture, distribution and sale by Defendants of the  
2 Headsets without adequate warning labels that the Headsets produce decibel levels  
3 harmful to the human ear constitutes deceptive and unlawful business practices. As a  
4 result of Defendants' conduct, numerous consumers have paid for an unsafe product  
5 which they falsely were led to believe could be safely used for extended periods of  
6 time.

7  
8           30. Despite the information provided by Plantronics in its "safety booklet,"  
9 Plantronics fails to divulge the decibel output of the device and the potential for noise  
10 induced hearing loss if the Headset is used at a loud setting for more than a safe  
11 number of hours per day. The exclusion of such information from the safety  
12 information in the booklet wrongly implies that the Headset is safe at its maximum  
13 volume for the hours of talk time permitted by the Headset. The safety book falsely  
14 represents to consumers that the "important" information provided in the booklet  
15 permits the "safe and efficient operation" of the Headset. This representation is false,  
16 as important safety information has been excluded from the booklet. Plaintiffs and  
17 the Class members relied upon such misrepresentations, omissions and concealments  
18 to their detriment.

19  
20           31. Plantronics affirmatively represented that the Headsets are warranted to  
21 be free from "defects in materials and workmanship." This representation was and is  
22 false. The Headsets are defective and cannot safely be used for their intended  
23 purpose. The materials and workmanship of the product cause the product to produce  
24 unsafe decibel levels under normal consumer usage.

25  
26           32. Plaintiff is informed and believes that the Headsets can be used to listen  
27 to music or television downloaded onto mobile phones. Because of these new uses  
28 for the mobile phone, the time over which the Headsets are used is increased

1 significantly. The decibel levels of the music or television also exceeds 85 decibel  
2 levels, and may even reach levels capable of producing hearing loss from a single  
3 exposure to the loud sound emitted.

4  
5 33. Other manufacturers of music listening devices, such as Apple with  
6 respect to its iPod, include a warning so that consumers are aware of the potential for  
7 hearing damage. For example, the iPod is sold with the following warning:

8  
9 **Avoid Hearing Damage**

10 **Warning:** Permanent hearing loss may occur if earphones or  
11 headphones are used at high volume. You can adapt over time  
12 to a higher volume of sound, which may sound normal but can  
be damaging to your hearing. Set your iPod's volume to a safe  
level before that happens. If you experience ringing in your  
ears, reduce the volume or discontinue use of your iPod.

13 The Headsets manufactured, distributed and sold by Defendants, which contain no  
14 such warnings, thus fail to follow industry standards for music listening devices.

15 34. Plaintiff seeks, on behalf of himself and the Class as defined below,  
16 injunctive relief, product repair, restitution, damages, and all other appropriate relief.

17 Defendants misrepresented the time period over which consumers could safely use  
18 the Headsets. In marketing and advertising the Headsets, Defendants also concealed  
19 and omitted material information as to the capacity for the Headsets to cause hearing  
20 loss. Plaintiff and the Class members thus: (1) cannot safely use the Headsets for the  
21 length of time for which the Headsets were advertised as usable; or (2) must turn the  
22 volume of the Headsets so low as to render the Headsets unusable in most  
23 environments, thereby drastically limiting and/or eliminating the usability of the  
24 product. Had Plaintiff and the Class they seek to represent known the true facts, they  
25 would not have purchased them or would have purchased them only at a lesser price.

26 Plaintiff, and the Class Members, lost money as a result of the misrepresentations,  
27 omissions and concealments by Defendants. In doing the acts herein alleged and  
28

1 purposefully risking the health and safety of millions of consumers in order to  
2 increase sales and profits, Defendants, and each of them, acted with oppression, fraud  
3 or malice, and Plaintiff and the Class members are entitled to punitive damages.

4  
5 **CLASS ACTION ALLEGATIONS**

6 35. Plaintiff brings this action both on behalf of himself, and as a class  
7 action on behalf of the following Class (the "Class"):

8  
9 All consumers who, within the four years prior to the  
10 filing of this Complaint ("Class Period"), purchased a  
Bluetooth Headset device manufactured by Defendant.

11  
12 Said definition may be further defined by additional pleadings, evidentiary hearings,  
13 a class certification hearing, and order of this Court.

14  
15 36. Although Plaintiff does not know the exact number of the members of  
16 the Class, since such information is within the exclusive control of Defendants,  
17 Plaintiff believes that due to the nature of the commerce involved, the number of  
18 members of the Class are sufficiently numerous, most likely thousands of purchasers,  
19 that joinder of all Class members is impracticable.

20  
21 37. The claims of Plaintiff are typical of the Class claims. Plaintiff  
22 purchased a Headset manufactured by Plantronics within the Class Period. The  
23 unsafe Headset was unfairly and falsely marketed by Defendants, with the same  
24 misrepresentations, omissions and concealments made as to Plaintiff and the Class  
25 members. All Class members purchased the Product within the Class Period.

26  
27 38. Numerous questions of law and fact are common to the Class, which  
28 predominate over any individual issues. Questions of law and fact which are

1 common to the Class include, without limitation:

- 2
- 3 a. Whether Defendants represented to consumers that the
- 4 Headsets had a characteristic, use, benefit or quality that
- 5 permitted a consumer to use the Headsets for an extended
- 6 amount of time;
- 7
- 8 b. Whether the Headsets in fact have a characteristic, use,
- 9 benefit or quality that prevents a consumer from safely using
- 10 the Headsets for an extended amount of time;
- 11
- 12 c. Whether use of the Headsets expose users to dangerous
- 13 levels of sound;
- 14
- 15 d. Whether Defendants failed to fairly, accurately and
- 16 sufficiently warn of the unsafe characteristics of the
- 17 Headsets;
- 18
- 19 e. Whether Defendant knowingly concealed the danger of using
- 20 the Headsets;
- 21
- 22 f. Whether Defendants truthfully advertised that the Headsets
- 23 could safely be used for over 8 hours of time;
- 24
- 25 g. Whether Defendants violated express and implied warranty
- 26 statutes;
- 27
- 28 h. Whether Defendants were unjustly enriched;

- i. The nature and extent of damages and other remedies to which the conduct of Defendants entitle the Class members;
- j. Whether the distribution of the Headsets to the consuming public constitutes an illegal nuisance.

39. Defendants engaged in a common course of conduct involving similar or identical unsafe designs, statutory violations, and misrepresentations. Individual questions, if any, pale by comparison to the numerous questions that dominate this litigation. The claims at issue herein do not seek damages for physical injury which has already occurred to the Class members, and thus individualized determination as to causation related to bodily injury already suffered will not be required. The monetary damages sustained by the Class members arise from a common nucleus of operative facts involving the Defendants' misconduct.

40. Plaintiff will fairly and adequately represent the interests of the Class in that Plaintiff, a California resident, is a typical purchaser of the Headsets. Plaintiff's interests do not conflict with the interests of the other Class members that she seeks to represent. Furthermore, Plaintiff has retained competent counsel experienced in class action litigation. Plaintiff's counsel will fairly and adequately protect the interests of the Class.

41. This class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy. The Class is readily definable. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

42. The relief sought per individual member of the Class is small given the

1 burden and expense of individual prosecution of the potentially extensive litigation  
2 necessitated by the conduct of Defendants. Furthermore, it would be virtually  
3 impossible for the Class members to seek redress on an individual basis. Even if the  
4 Class members themselves could afford such individual litigation, the court system  
5 could not.

6  
7 43. The Class members have been monetarily damaged and suffered injury  
8 in fact as a result of Defendants' misconduct in that each member purchased an  
9 unsafe Headset which the member would not have purchased if the true facts as to the  
10 product's safety and limitations had been revealed by Defendants. The Class  
11 members would not have purchased the Headsets and/or paid as much had they  
12 known the truth about the product.

13  
14 44. Individual litigation of the legal and factual issues raised by the conduct  
15 of Defendants would increase delay and expense to all parties and to the court  
16 system. The class action device presents far fewer management difficulties and  
17 provides the benefits of a single, uniform adjudication, economies of scale and  
18 comprehensive supervision by a single court. Given the similar nature of the Class  
19 members' claims and the law applicable thereto, the Court and the parties will easily  
20 be able to manage a class action.

21  
22 45. Prosecution of separate actions by individual Class members would  
23 create the risk of inconsistent or varying adjudications, establishing incompatible  
24 standards of conduct for the Defendants.

25  
26 46. Injunctive relief is appropriate as to the Class as a whole because  
27 Defendants have acted or refused to act on grounds generally applicable to the Class.  
28



**CALIFORNIA C.C.P. § 382 COMMON OR GENERAL INTEREST**  
**ALLEGATIONS**

47. In addition to asserting class action claims in this action, Plaintiff asserts claims on behalf of the common or general interest and sues for the benefit of all because the parties are numerous, and it is impracticable to bring them all before the court. Plaintiff seeks to require Defendants to disgorge and restore all monies wrongfully obtained. A common or general interest action is necessary and appropriate because Defendants have engaged and continue to engage in the wrongful acts described herein as a general business practice.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**  
**(CAL. CIV. CODE § 1750 et seq.)**

48. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

49. Plaintiff and members of the Class are individuals who have purchased goods (i.e., the Headsets) for personal, family or household purposes. This cause of action is being asserted on behalf of a sub-class of all persons who purchased a Headset within three years of the filing of this action.

50. Defendants have represented that the Headsets have characteristics, uses, benefits, or qualities that they do not have, in violation of Civil Code § 1770(a)(5). Defendants also represented that the Headsets had a particular standard or quality that they do not have in violation of Civil Code § 1770(a)(7).

51. Plaintiff and the members of the Class have each been directly and proximately injured by the conduct of Defendants, and such injury includes payment

1 for the unsafe Headsets.

2  
3 52. In accordance with California Civil Code § 1780 (a), Plaintiff and the  
4 members of the Class seek only injunctive relief as to Defendants' violation of the  
5 CLRA. Pursuant to the provisions of Civil Code section 1782, on October 9, 2006,  
6 Plaintiff sent by certified letter to Plantronics a demand that it adequately correct,  
7 repair, replace or otherwise rectify the deceptive practices described in this  
8 Complaint for the entire Class, pursuant to Civil Code section 1770. In accordance  
9 with Civil Code § 1782 (a) & (d), Plaintiff will subsequently amend this Class Action  
10 Complaint without leave of Court to include a request for damages if Defendants fail  
11 to adequately correct, repair replace or otherwise rectify the deceptive practices,  
12 described in this Complaint and the certified letter, for the entire Class.

13  
14 53. The Court should enjoin the Defendants from any further sales,  
15 marketing or advertisement of the Headsets which contain the misrepresentations  
16 detailed herein as to the standard, characteristics, uses, benefits, and/or qualities of  
17 the Headsets. The Court should enjoin Defendants from any further sales, marketing  
18 or advertisement of the Headsets without a warning as to the potential for noise  
19 induced hearing loss. The Court should further enjoin Defendants from any further  
20 sales of the Headsets until Defendant redesigns the Headsets in a manner which  
21 ensures that the volume emitted by the Headsets does not exceed 85 decibels or, in  
22 the alternative, which provides the consumer with the ability to determine the decibel  
23 level of the sound being emitted by the Headset.

24  
25 54. Plaintiff engaged counsel to prosecute this action and is entitled to  
26 recover costs and reasonable attorney's fees according to proof at trial.

**SECOND CAUSE OF ACTION**

**VIOLATION OF UNFAIR COMPETITION LAW  
(CAL. B & P CODE § 17200 et seq.)**

55. Plaintiff incorporates by reference all the above allegations as if fully set forth herein, except for paragraphs 47 through 53.

56. Plaintiff brings this cause of action on behalf of himself and on behalf of the Class. Plaintiff and the Class members have suffered injury in fact and lost money or property as a result of unfair competition by Defendants, as Plaintiff and the Class members paid the purchase price for an unsafe product which would not have been purchased if Defendants had not made misrepresentations and concealed or omitted material information as to the safety of the product and its limitations. Plaintiff and the Class members relied upon Defendants to disclose all pertinent safety information and the limitations on the safe usage of the product. Plaintiff and the Class members have further suffered injury in fact having been subjected to a nuisance, as defined by California Civil Code, section 3479, and as to which they were subjected by virtue of money innocently paid in purchasing a product injurious to health so as to interfere with the comfortable enjoyment of life.

57. The actions of Defendants, as complained herein, constitute unfair, deceptive and unlawful practices committed in violation of the Unfair Competition Act. Plaintiff is informed and believe that the conduct of Defendants violated the Unfair Competition Act because:

- a. Defendants were aware, or upon reasonable investigation should have been aware, of the risks presented by the use of the Headsets;

1 b. Defendants purposefully and knowingly failed to adequately  
2 warn the consumer of the safety risk presented by use of the  
3 Headset;

4  
5 c. Defendants advertised and marketed the Headsets with a  
6 representation that the Headsets could be used in excess of  
7 the number of hours which would be safe, even though  
8 Defendants were aware or should have been aware that such  
9 use could be unsafe;

10  
11 d. Defendants failed to include in the safety information  
12 provided with the Headsets any mention of the potential for  
13 noise induced hearing loss, even though such a warning had  
14 been issued by competitors;

15  
16 e. Defendants concealed, omitted and/or suppressed  
17 information as to the decibel levels emitted by the Headsets  
18 and the corresponding time limitations for use;

19  
20 f. Defendants have unlawfully violated regulations limiting  
21 exposure to certain decibel levels over certain periods of  
22 time;

23  
24 g. The Headsets, and Defendants' sale thereof to a considerable  
25 number of persons, constitutes a nuisance because the  
26 Headsets are injurious to health and/or interfere with the  
27 comfortable enjoyment of life, in violation of California  
28 Civil Code § 3479;

h. Defendants' conduct violates maxims of jurisprudence,  
including Civil Code §§ 3514, 3520, 3523.

58. Plaintiff is informed and believes that Defendants are aware, or should be aware, of the risk of hearing loss posed by the Headsets, but Defendants chose to market and sell the Headsets without adequate warning or modifications because such warnings or modifications could have had an adverse impact on the sale of the Headsets and the revenue flowing to Defendants.

59. Plaintiff and the Class members have suffered damages as a result of the conduct of Defendants, because Plaintiff and the Class members were misled into purchasing a product which was not safe and which was not what Defendants advertised the product to be.

60. Plaintiff is informed and believes that all of the conduct alleged herein occurs and continues to occur in Defendants' business. The conduct of Defendants is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

61. Plaintiff requests that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair practices as provided in Bus. & Prof. Code § 17203, and for such other relief as set forth below.

62. Plaintiff is informed and believes that the continuing sales of the Headsets to the unsuspecting public, without warnings and any mechanism by which the public may protect its hearing, exposes the consuming public in an ongoing danger of noise induced hearing loss, an irreparable and devastating loss. Because

1 the noise induced hearing loss at issue herein is a silent condition (i.e., one is unaware  
2 that it is occurring as it evolves and until it is too late) that progressively occurs over  
3 time, everyday the consuming public uses the product, consumers continue down the  
4 path of noise induced hearing loss, incrementally but permanently affecting and/or  
5 jeopardizing one's long-term ability to hear. With every additional sale of the  
6 product, this path becomes increasingly congested. Plaintiff requests that this Court  
7 enter a temporary restraining order, a preliminary injunction, and a permanent  
8 injunction enjoining Defendants, and their agents, servants, employees and all  
9 persons acting under or in concert with them, to cease and desist from the following  
10 acts:

- 11
- 12 a. Selling, marketing or advertising the Headsets without a  
13 warning advising the consumer as to the product's potential  
14 for causing noise induced hearing loss;
- 15
- 16 b. Selling, marketing or advertising the Headsets without a  
17 mechanism by which the user can determine the decibel  
18 levels being emitted by the Headsets and thereby be made  
19 aware of the safe time limits for use of the Headsets at the  
20 higher volume settings;
- 21
- 22 c. Any other conduct which the Court determines warranted so  
23 as to prevent the commission of unfair competition by  
24 Defendants.
- 25

26 63. Plaintiff, on behalf of himself, the Class, and on behalf of the common  
27 or general interest, seeks an order of this Court awarding restitution, injunctive relief  
28 and all other relief allowed under § 17200, *et seq.*, plus interest, attorneys' fees and

costs pursuant to, *inter alia*, C.C.P. § 1021.5. Plaintiff engaged counsel to prosecute this action and is entitled to recover costs and reasonable attorney's fees according to proof at trial. This case will result in the enforcement of an important right affecting the public interest, a significant benefit (pecuniary or nonpecuniary) will be conferred on a large class of persons (thousands if not tens of thousands or more), the necessity and financial burden of private enforcement are such as to make the award appropriate (the product costs less than \$200, which is minimal in comparison to the financial burden of litigating this important action, made necessary by virtue of Plantronics' refusal to protect the public's hearing); and such fees should not in the interest of justice be paid out of the recovery, if any (as the cost of litigation by itself may exceed the monetary amounts paid by way of restitution).

64. Plaintiff meets the standing requirements of C.C.P. § 382 to bring this cause of action because, among other reasons, the question is one of a common or general interest, is a question of many persons and/or the parties are numerous and it is impracticable to bring them all before the Court. Further, Plaintiff has standing to bring this action as Plaintiff suffered injury in fact and monetary damages as a result of Defendants' conduct.

### **THIRD CAUSE OF ACTION**

#### **UNTRUE AND MISLEADING ADVERTISING (CAL. B & P CODE § 17500, et seq.)**

65. Plaintiff incorporates by reference all the above allegations as if fully set forth herein, except for paragraphs 47 through 53.

66. Plaintiff brings this cause of action on behalf of himself, on behalf of the Class, and on behalf of the common or general interest. Plaintiff has suffered injury in fact and lost money or property as a result of Defendants' violations of Bus. & Prof. Code § 17500. *et seq.*

1       67. Plaintiff is informed and believes that Defendants made representations  
2 disseminated to the public as to the uses of the Headsets in advertisements, product  
3 descriptions and other sales materials, while also concealing and/or omitting relevant  
4 information which would have qualified such affirmative representations. These  
5 representations, omissions and concealments were made to induce the public to  
6 purchase the Headsets. The representations were false. The information omitted and  
7 concealed should have been disseminated.

8  
9       68. Defendants were aware, or by the exercise of reasonable case should  
10 have been aware, that the representations were untrue or misleading. Defendants also  
11 were aware, or by the exercise of reasonable case should have been aware, that the  
12 concealments and omissions should have been disseminated in the advertising.

13  
14       69. Plaintiff has been harmed. Plaintiff, on behalf of himself, on behalf of  
15 the Class, and on behalf of the common or general interest, seeks restitution,  
16 injunctive relief and all other relief allowable under § 17500, *et seq.*

17  
18       70. Pursuant to Bus. & Prof. Code § 17535, Plaintiff and members of the  
19 Class are entitled to remedies as set forth below.

20  
21       71. Plaintiff meets the standing requirements of C.C.P. § 382 to bring this  
22 cause of action because, among other reasons, the question is one of a common or  
23 general interest, is a question of many persons and/or the parties are numerous and it  
24 is impracticable to bring them all before the Court.

25  
26 ///

27 ///

28 ///



**FOURTH CAUSE OF ACTION**

**UNJUST ENRICHMENT**

72. Plaintiff incorporates by reference all the above allegations as if fully set forth herein, except for paragraphs 47 through 53.

73. Defendants have benefited and been unjustly enriched by the above-alleged conduct. Defendants knowingly sold the Headsets to Plaintiff and members of the Class based upon misrepresentations as to uses which the product did not possess and concealment and omission of information which should have been disseminated.

74. Defendants have knowledge of this benefit, and have voluntarily accepted and retained this benefit.

75. The circumstances as described herein are such that it would be inequitable for Defendants to retain these ill-gotten benefits without paying the value thereof to Plaintiff and the Class members.

76. Plaintiff and the Class are entitled to the amount of Defendants' ill-gotten gains, including interest, resulting from its unlawful, unjust and inequitable conduct as described above.

**FIFTH CAUSE OF ACTION**

**BREACH OF EXPRESS WARRANTY  
(Cal. Civil Code § 1792.2 et seq.)**

77. Plaintiff incorporates by reference all the above allegations as if fully set forth herein, except for paragraphs 47 through 53.

78. This claim is asserted on behalf of a sub-class of all persons whose

1 express warranty is still in effect, i.e., Class members who purchased a headset within  
2 one year of the filing of this action.

3  
4 79. Defendants expressly warranted that their products were free of defects  
5 in materials and workmanship.

6  
7 80. Defendants' Headsets are defective in materials and/or workmanship.

8  
9 81. Plaintiff and the Class members have incurred damages as described  
10 herein as a direct and proximate result of the defective Headsets and Defendants'  
11 violation of the provisions of the Cal. Civ. Code § 1791.2, *et seq.*, in that Plaintiff and  
12 the Class have paid the purchase price for a product which cannot be safely used for  
13 the purpose and length of time for which it was marketed and sold. Plaintiff, on  
14 behalf of himself and the Class members, has requested that Defendants correct or  
15 repair the defects and Defendants have refused. Plaintiff and the Class Members are  
16 entitled to refund of the purchase price of the Product, consequential and incidental  
17 damages, costs and expenses, including attorney's fees.

18  
19 **SIXTH CAUSE OF ACTION**

20 **BREACH OF IMPLIED WARRANTY**  
(Cal. Civil Code § 1790 *et seq.*)

21 82. Plaintiff incorporates by reference all the above allegations as if fully  
22 set forth herein, except for paragraphs 47 through 53.

23  
24 83. This claim is asserted on behalf of a subclass of all purchasers of the  
25 Headsets who purchased it within one year of the filing of this Complaint.

26  
27 84. The Headsets are consumer goods as defined in Cal. Civil Code § 1791.

1        85. The Headsets were sold with the implied warranty of merchantability in  
2 that they would pass without objection in the trade, are fit for the ordinary purpose  
3 for which they are used, are adequately contained, packaged, and labeled, and  
4 conform to the promises or affirmations of fact made on the container and label. The  
5 Headsets do not meet any of the foregoing criteria.

6  
7        86. The Headsets were sold with the implied warranty of fitness in that  
8 Defendants had reason to know of the particular purpose for which the Headsets were  
9 required (i.e., to listen safely to communications, music and television via mobile  
10 phones) and Plaintiff and the Class members relied upon Defendants' skill and  
11 judgment to furnish suitable goods. The Headsets are not suitable for the purpose for  
12 which they are required, as Plaintiff and the Class members have no ability to  
13 determine the decibel levels being emitted from the devices and the corresponding  
14 safe time during which Plaintiff and the Class members may listen to the sound being  
15 emitted at such levels.

16  
17        87. The defect in the Headsets existed prior to the delivery of the Headsets  
18 to Plaintiff and the Class members.

19  
20        88. Plaintiff and the Class members have incurred damages as described  
21 herein as a direct and proximate result of the defective design of the Headsets and  
22 Defendants' breach of the implied warranties, in that Plaintiff and the Class have paid  
23 the purchase price for a product which cannot be safely used for the purpose and  
24 length of time for which it was marketed and sold. Plaintiff, on behalf of himself and  
25 the Class members, has requested that Defendants correct or repair the defects and  
26 Defendants have refused. Plaintiff and the Class Members are entitled to refund of  
27 the purchase price of the Product, consequential and incidental damages, costs and  
28 expenses, including attorney's fees.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and as representative of all other persons similarly situated, prays for judgment against the Defendants, as follows:

1. An Order certifying the Class and any appropriate sub-class thereof, and appointing Plaintiff Lori Raines and her counsel to represent the Class;
2. As to the Fourth through Sixth Causes of Action, for an award of general damages according to proof;
3. As to the Fourth through Sixth Causes of Action, for an award of special damages according to proof;
4. As to the Fourth through Sixth Causes of Action, for an award of punitive damages in an amount sufficient to deter and make an example of Defendants;
5. As to the Second through Sixth Causes of action, for an award of restitution in an amount according to proof;
6. As to all causes of action, for a temporary restraining order, a preliminary injunction and a permanent injunction enjoining Defendants, and their agents, servants, employees and all persons acting under or in concert with them, to cease and desist from the following acts:
  - Selling, marketing or advertising the Headsets without a detailed warning advising the consumer as to the potential for noise induced hearing loss and the known risk of harm associated with exposure, even for brief intervals, to sound at high decibel levels;
  - Selling, marketing or advertising the Headsets without a mechanism by which the user can readily

1 and easily determine the decibel levels being  
2 emitted by the Headsets and thereby be made aware  
3 of the safe time limits (if any) for use of the  
4 Headsets at the higher volume settings;

- 5 • Any other conduct which the Court determines  
6 warranted so as to prevent the commission of unfair  
7 competition by Defendants.

8 7. As to the Fourth through Sixth Causes of Action, for an order of  
9 disgorgement;

10 8. For costs incurred herein;

11 9. For prejudgment interest;

12 10. For reasonable attorneys' fees;

13 11. For all general, special, and equitable relief to which the  
14 Plaintiffs and the members of the Class are entitled by law.

15 Dated: October 19, 2006

16 THE GARCIA LAW FIRM

17 By: 

18 Stephen M. Garcia  
19 Serina M. Hinson  
20 Attorneys for Plaintiffs  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury.

DATED: October 19, 2006

**THE GARCIA LAW FIRM**

By: 

Stephen M. Garcia  
Sarina M. Hinson  
Attorneys for Plaintiff